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Senate Engrossed House Bill

State of Arizona  
House of Representatives  
Forty-sixth Legislature  
Second Regular Session  
2004

# HOUSE BILL 2646

AN ACT

AMENDING SECTIONS 31-402 AND 31-411, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 11, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-1609.05; RELATING TO THE STATE DEPARTMENT OF CORRECTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 31-402, Arizona Revised Statutes, is amended to  
3 read:

4 31-402. Powers of board; powers and duties of governor; powers  
5 and duties of executive director

6 A. For all persons who committed felony offenses before January 1,  
7 1994, the board of executive clemency shall have exclusive power to pass upon  
8 and recommend reprieves, commutations, paroles and pardons. No reprieve,  
9 commutation or pardon may be granted by the governor unless it has first been  
10 recommended by the board.

11 B. For all persons who committed felony offenses before January 1,  
12 1994, all applications for reprieves, commutations and pardons made to the  
13 governor shall be at once transmitted to the chairman of the board, and the  
14 board shall return the applications with its recommendation to the governor.  
15 All applications for reprieves, commutations and pardons made to the governor  
16 shall include documentation that the victim or the victim's family was  
17 notified pursuant to section 31-411, subsection H.

18 C. For all persons who committed felony offenses on or after January  
19 1, 1994, in addition to the powers and duties prescribed in subsection A of  
20 this section, the board of executive clemency:

21 1. Is vested with the powers and duties of the board of pardons and  
22 paroles as they existed before January 1, 1994 to carry out the provisions of  
23 articles 3 through 7 of this chapter.

24 2. After a hearing for which the victim, county attorney and presiding  
25 judge are given notice and an opportunity to be heard, may make  
26 recommendations to the governor for commutation of sentence after finding by  
27 clear and convincing evidence that the sentence imposed is clearly excessive  
28 given the nature of the offense and the record of the offender and that there  
29 is a substantial probability that when released the offender will conform the  
30 offender's conduct to the requirements of the law.

31 3. Shall receive petitions from individuals for whom the court has  
32 entered a special order allowing the person to petition the board pursuant to  
33 section 13-603, subsection L and may make recommendations to the governor.

34 4. Shall receive petitions from individuals, organizations or the  
35 department for review and commutation of sentences and pardoning of offenders  
36 in extraordinary cases and may make recommendations to the governor.

37 5. Shall receive petitions from the state department of corrections  
38 alleging that an offender has violated the offender's terms and conditions of  
39 community supervision and has lapsed or is probably about to lapse into  
40 criminal ways or company. If the board determines that an offender on  
41 community supervision has violated the terms and conditions of community  
42 supervision the board may ~~either~~ DO ANY OF THE FOLLOWING:

43 (a) IF THE OFFENDER HAS NOT COMMITTED AN ADDITIONAL OFFENSE, PLACE THE  
44 OFFENDER ON ELECTRONIC MONITORING AND ORDER THE OFFENDER TO PARTICIPATE IN A  
45 COMMUNITY ACCOUNTABILITY PROGRAM PURSUANT TO SECTION 41-1609.05.

1           ~~(a)~~ (b) Revoke community supervision and return the offender to  
2 prison for the remainder of the offender's community supervision.

3           ~~(b)~~ (c) Impose additional terms and conditions on the offender while  
4 keeping the offender on community supervision. If there is reasonable cause  
5 to believe that an offender who has been kept on community supervision has  
6 violated any term or condition of community supervision, any member of the  
7 board may petition the board to revoke community supervision. After a  
8 petition to revoke has been submitted, the chairman may issue a summons  
9 directing the offender to appear on a specified date for a revocation hearing  
10 or may issue a warrant for the offender's arrest. Nothing in this subsection  
11 limits the state department of corrections' authority with respect to  
12 submitting revocation petitions or issuing revocation warrants.

13           D. Any recommendation for commutation that is made unanimously by the  
14 members present and voting and that is not acted on by the governor within  
15 ninety days after the board submits its recommendation to the governor  
16 automatically becomes effective.

17           E. The executive director shall perform all administrative,  
18 operational and financial functions for the board.

19           F. The executive director may employ case analysts as deemed necessary  
20 within the limits of legislative appropriation. The analyst shall aid the  
21 board in making investigations, in securing information and in performing  
22 necessary administrative functions to assist the board in passing upon  
23 applications for parole and commutation.

24           G. The executive director may employ hearing officers as deemed  
25 necessary within the limits of legislative appropriation. The hearing  
26 officers shall conduct probable cause hearings on parole, work furlough and  
27 home arrest revocations or rescissions. Hearing officers shall assist the  
28 board in making investigations, securing information and performing necessary  
29 administrative functions.

30           Sec. 2. Section 31-411, Arizona Revised Statutes, is amended to read:

31           31-411. Parole or discharge; conditions of parole; release  
32                           under supervision of state department of corrections;  
33                           notice of hearing; exceptions

34           A. Any prisoner who has been certified as eligible for parole or  
35 absolute discharge from imprisonment pursuant to section 31-412, subsection B  
36 or section 41-1604.09 shall be given an opportunity to apply for release upon  
37 parole or for an absolute discharge from imprisonment. The board of  
38 executive clemency shall not entertain any other form of application or  
39 petition for the release upon parole or absolute discharge from imprisonment  
40 of any prisoner.

41           B. A prisoner eligible for parole or absolute discharge from  
42 imprisonment shall be given an opportunity to be heard either before a  
43 hearing officer designated by the board or the board itself, at the  
44 discretion of the board.

1 C. If the hearing is heard by a hearing officer, the hearing officer  
2 shall make a recommendation on application for parole or absolute discharge  
3 from imprisonment to the board within thirty days after the hearing date.  
4 Within thirty days after the date of the hearing officer's recommendations,  
5 the board shall review these recommendations and either approve, with or  
6 without conditions, or reject the prisoner's application for parole or  
7 absolute discharge from imprisonment. A prisoner eligible for parole or  
8 absolute discharge from imprisonment shall not be denied parole or absolute  
9 discharge from imprisonment without an opportunity to be heard before the  
10 board unless another form of release has been granted.

11 D. If parole is granted, the prisoner shall remain on parole unless  
12 the board revokes the parole or grants an absolute discharge from parole or  
13 until the prisoner reaches ~~his~~ THE individual earned release credit date  
14 pursuant to section 41-1604.10. IF THE PRISONER VIOLATES A CONDITION OF  
15 PAROLE BUT HAS NOT COMMITTED AN ADDITIONAL OFFENSE, THE BOARD MAY PLACE THE  
16 PRISONER ON ELECTRONIC MONITORING AND ORDER THE DEFENDANT TO PARTICIPATE IN A  
17 COMMUNITY ACCOUNTABILITY PROGRAM PURSUANT TO SECTION 41-1609.05. If the  
18 prisoner is still on parole ~~when he reaches his~~ ON REACHING THE individual  
19 earned release credit date pursuant to section 41-1604.10, ~~he~~ THE PRISONER  
20 shall be terminated from parole but shall be subject to revocation under  
21 section 41-1604.10. When the prisoner reaches ~~his~~ THE individual earned  
22 release credit date ~~his~~ THE PRISONER'S parole shall be terminated and ~~he~~ THE  
23 PRISONER shall no longer be under the authority of the board.

24 E. During the period of time that the prisoner remains on supervised  
25 parole under subsection D of this section, the board shall require as a  
26 condition of parole that the prisoner pay a monthly supervision fee of not  
27 less than thirty dollars unless, after determining the inability of the  
28 prisoner to pay the fee, the board requires payment of a lesser amount. The  
29 supervising parole officer shall monitor the collection of the fee. The  
30 board may also impose any conditions of parole it deems appropriate in order  
31 to ensure that the best interests of the prisoner and the citizens of this  
32 state are served. These conditions may include:

- 33 1. Participation in a rehabilitation program or counseling.
- 34 2. Performance of community service work.

35 F. Monies collected pursuant to subsection E of this section shall be  
36 deposited, pursuant to sections 35-146 and 35-147, in the victim compensation  
37 and assistance fund established by section 41-2407.

38 G. When parole or absolute discharge from imprisonment is denied, the  
39 board, ~~shall~~ within ten days, SHALL prepare and deliver to the director of  
40 the state department of corrections a written statement specifying the  
41 individualized reasons for the denial of parole or absolute discharge from  
42 imprisonment unless another form of release has been granted. The prisoner  
43 may view the written statement prepared by the board. Every prisoner, having  
44 served not less than one year, may be temporarily released according to the  
45 rules of the department one hundred eighty days prior to the expiration of

1 the sentence or the earned release credit date, whichever first occurs, if  
2 the director finds that such release is in the best interest of the state.  
3 The releasee shall remain under control of the state department of  
4 corrections until expiration of the term specified in the sentence. If the  
5 releasee violates any condition of release, the releasee may be returned to  
6 custody without further process.

7 H. ~~The board,~~ When a commutation, absolute discharge from imprisonment  
8 or parole is to be considered, ~~shall~~ THE BOARD, on request and before holding  
9 a hearing on the commutation, absolute discharge from imprisonment or parole,  
10 SHALL notify the attorney general, the presiding judge of the superior court,  
11 the county attorney in the county in which the prisoner requesting a  
12 commutation, absolute discharge from imprisonment or parole was sentenced,  
13 and the victim of the offense for which the prisoner is incarcerated. The  
14 notice to the victim shall be mailed to the last known address. The notice  
15 shall state the name of the prisoner requesting the commutation, absolute  
16 discharge from imprisonment or parole and shall set the month of hearing on  
17 the application. The notice to the victim shall also inform the victim of the  
18 victim's right to be present and to submit a written report to the board  
19 expressing the victim's opinion concerning the release of the prisoner. No  
20 hearing concerning commutations, absolute discharge from imprisonment or  
21 parole shall be held until fifteen days after the date of giving the notice.  
22 On mailing the notice, the board shall file a hard copy of the notice as  
23 evidence that notification was sent.

24 I. The provisions of this section requiring notice to the officials  
25 named in subsection H of this section shall not apply:

26 1. When there is imminent danger of the death of the person convicted  
27 or imprisoned.

28 2. When the term of imprisonment of the applicant is within two  
29 hundred ten days of expiration.

30 Sec. 3. Title 41, chapter 11, article 1, Arizona Revised Statutes, is  
31 amended by adding section 41-1609.05, to read:

32 41-1609.05. Community accountability pilot program; fund;  
33 program termination; definition

34 A. THE DEPARTMENT SHALL CONTRACT WITH AN EXPERIENCED PRIVATE OR  
35 NONPROFIT ENTITY TO OPERATE A COMMUNITY ACCOUNTABILITY PILOT PROGRAM TO  
36 PROVIDE ELIGIBLE INMATES WITH SUPERVISION AND TREATMENT SERVICES. THE  
37 DEPARTMENT SHALL PROCURE COMMUNITY ACCOUNTABILITY SERVICES PURSUANT TO  
38 CHAPTER 23 OF THIS TITLE.

39 B. THE PILOT PROGRAM SHALL INITIALLY PROVIDE SERVICES TO NOT MORE THAN  
40 ONE THOUSAND ELIGIBLE INMATES. AT THE END OF THE SECOND YEAR OF THE PILOT  
41 PROGRAM, THE PROGRAM SHALL PROVIDE SERVICES TO NOT MORE THAN TWO THOUSAND  
42 ELIGIBLE INMATES. THE PROGRAM SHALL PROVIDE SERVICES THAT ARE DESIGNED TO  
43 LOWER RECIDIVISM RATES BY PROVIDING INTENSIVE MONITORING AND SPECIFIC  
44 TREATMENT. INMATES SHALL ENROLL IN THE PROGRAM FOR AT LEAST NINETY DAYS  
45 UNLESS REMOVED BY THE DIRECTOR PURSUANT TO SUBSECTION E OF THIS SECTION.

1 C. THE GOALS OF THE COMMUNITY ACCOUNTABILITY PILOT PROGRAM INCLUDE:  
2 1. REDUCING RECIDIVISM.  
3 2. PROVIDING TREATMENT AND REHABILITATION SERVICES.  
4 3. PROVIDING SUPERVISION THROUGH ELECTRONIC MONITORING.  
5 4. PREPARING ELIGIBLE INMATES FOR INDEPENDENT LIVING FOLLOWING  
6 COMMUNITY SUPERVISION.  
7 5. ENHANCING PUBLIC SAFETY.  
8 D. THE COMMUNITY ACCOUNTABILITY PILOT PROGRAM MAY PROVIDE THE  
9 FOLLOWING SERVICES TO ELIGIBLE INMATES:  
10 1. SUBSTANCE ABUSE EDUCATION AND TREATMENT.  
11 2. RANDOM MANDATORY DRUG TESTING.  
12 3. ELECTRONIC MONITORING, REMOTE ALCOHOL TESTING, GLOBAL POSITIONING  
13 SYSTEM TRACKING AND VOICE IDENTIFICATION COMMUNITY TRACKING.  
14 4. LIFE SKILLS PROGRAMMING.  
15 5. EMPLOYMENT PREPARATION.  
16 6. ANGER MANAGEMENT.  
17 7. PARENTING SKILLS AND FAMILY ORIENTATION.  
18 8. COGNITIVE SKILLS TRAINING.  
19 9. GENERAL EQUIVALENCY DIPLOMAS AND ADULT BASIC EDUCATION.  
20 10. HOUSING ASSISTANCE.  
21 11. HEALTH CARE AND STRESS MANAGEMENT.  
22 12. TRANSPORTATION PLANNING.  
23 13. GROUP AND INDIVIDUAL COUNSELING.  
24 E. THE DIRECTOR SHALL IDENTIFY INMATES WHO ARE ELIGIBLE FOR THE  
25 COMMUNITY ACCOUNTABILITY PILOT PROGRAM AND SHALL DETERMINE ALL SUPERVISION,  
26 ADMISSION AND TERMINATION REQUIREMENTS. THE DIRECTOR MAY REMOVE AN INMATE  
27 FROM THE PROGRAM. THE DIRECTOR MAY ORDER AN ELIGIBLE INMATE TO PARTICIPATE IN  
28 THE PROGRAM IN LIEU OF PAROLE OR COMMUNITY SUPERVISION REVOCATION.  
29 F. THE CONTRACTING ENTITY SHALL OPERATE THE PROGRAM, INCLUDING THE  
30 MANAGEMENT OF ANY FACILITY AND ITS STAFF, THE DESIGN OF THE PROGRAM AND THE  
31 INSTALLATION AND MAINTENANCE OF ALL EQUIPMENT NECESSARY FOR OPERATION OF ANY  
32 FACILITY. THE CONTRACTING ENTITY SHALL USE EXISTING RISK ASSESSMENT SCORES  
33 UTILIZED BY THE DEPARTMENT TO ESTABLISH THREE LEVELS OF BEHAVIOR MODIFICATION  
34 AND TREATMENT SERVICES. ON INITIAL ENTRANCE INTO THE PROGRAM, AN ELIGIBLE  
35 INMATE SHALL BE PLACED IN LEVEL ONE. CASE MANAGERS SHALL PROVIDE MONTHLY  
36 REPORTS TO THE ELIGIBLE INMATE'S SUPERVISING OFFICER, EXCEPT THAT A VIOLATION  
37 SHALL BE REPORTED WITHIN TWENTY-FOUR HOURS.  
38 G. AFTER AN ELIGIBLE INMATE HAS BEEN IN THE PROGRAM FOR SIXTY DAYS OR  
39 MORE, THE DEPARTMENT MAY REQUIRE AS A CONDITION OF PROGRAM PARTICIPATION THAT  
40 THE ELIGIBLE INMATE PAY A SUPERVISION FEE, UNLESS THE INMATE IS DETERMINED TO  
41 BE INDIGENT. THE CASE MANAGER SHALL MONITOR THE COLLECTION OF THE FEE.  
42 MONIES COLLECTED PURSUANT TO THIS SUBSECTION SHALL BE DEPOSITED, PURSUANT TO  
43 SECTIONS 35-146 AND 35-147, IN THE COMMUNITY ACCOUNTABILITY FUND ESTABLISHED  
44 PURSUANT TO SUBSECTION H OF THIS SECTION.

1           H. THE COMMUNITY ACCOUNTABILITY FUND IS ESTABLISHED CONSISTING OF FEES  
2 COLLECTED PURSUANT TO SUBSECTION G OF THIS SECTION. THE DIRECTOR SHALL  
3 ADMINISTER THE FUND FOR THE PURPOSES OF THIS SECTION. MONIES IN THIS FUND  
4 ARE CONTINUOUSLY APPROPRIATED.

5           I. DURING THE FIRST YEAR OF OPERATION OF THE PILOT PROGRAM, THE  
6 CONTRACTING ENTITY SHALL PROVIDE MONTHLY REPORTS TO THE DEPARTMENT AND THE  
7 JOINT LEGISLATIVE BUDGET COMMITTEE. BEGINNING IN THE SECOND YEAR OF THE  
8 PILOT PROGRAM, THE CONTRACTING ENTITY SHALL REPORT AT LEAST ANNUALLY TO THE  
9 DEPARTMENT AND THE JOINT LEGISLATIVE BUDGET COMMITTEE.

10          J. THE PILOT PROGRAM ESTABLISHED BY THIS SECTION ENDS ON JULY 1, 2009  
11 PURSUANT TO SECTION 41-3102.

12          K. FOR THE PURPOSES OF THIS SECTION, "ELIGIBLE INMATE" MEANS AN INMATE  
13 WHO IS ON COMMUNITY SUPERVISION OR WHO IS ELIGIBLE FOR COMMUNITY SUPERVISION  
14 AND WHO HAS NOT BEEN CONVICTED OF A VIOLENT OFFENSE AS DEFINED IN SECTION  
15 13-604.04, A DANGEROUS CRIME AGAINST CHILDREN AS DEFINED IN SECTION 13-604.01  
16 OR A SEXUAL OFFENSE PURSUANT TO TITLE 13, CHAPTER 14 OR 35.